

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:FSH:MAN:TL-N-4624-00
JSRubinstein

date:

to: Territory Manager, Financial Services and Healthcare
Attention: Joan Pagen, International Examiner

from: Area Counsel (Financial Services & Healthcare) (Area 1)

subject:

Tax Years: [REDACTED] through [REDACTED]
Form 872 - Consent to Extend the Statute of Limitations
Statute of Limitations Expires [REDACTED].

UIL Nos. 6501.08-09, 6501.08-17

DISCLOSURE STATEMENT

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This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This memorandum responds to your request for written advice concerning the appropriate language to be used on a Form 872 Consent to Extend the Statute of Limitations on Assessment. Our office discussed this issue with Robin Tuczak of the National Office, who agrees that multiple Form 872s should be secured since the taxpayer was unable to provide merger documentation.

Issues

1. What specific language should be used on the Form 872, Consent to Extend the Statute of Limitations on Assessment.

2. [REDACTED], (b)(7)a, (b)(5)(AC)
[REDACTED], (b)(7)a, (b)(5)(AC)

ConclusionIssue 1.

In order to protect the Service's interest, we conclude that multiple Form 872s should be secured since the taxpayer is unable to provide the merger documentation needed to determine the proper caption for the Form 872.

The first Form 872 for the [REDACTED] through [REDACTED] tax years should be captioned as follows:

"[REDACTED] (E.I.N. [REDACTED]), as successor in interest to [REDACTED] (E.I.N. [REDACTED]), formerly known as [REDACTED] (EIN [REDACTED])."

The second Form 872 for the [REDACTED] through [REDACTED] tax years should be captioned as follows:

"[REDACTED] (E.I.N. [REDACTED]), formerly known as [REDACTED] (E.I.N. [REDACTED]), formerly known as [REDACTED] (EIN [REDACTED])."

Please forward the merger documentation to this office as soon as it becomes available. This conclusion is subject to our other recommendations made herein, which should be read in full before preparing the Form 872.

Issue 2.

[REDACTED], (b)(7)a, (b)(5)(AC)
[REDACTED]

Facts

This opinion is based on the facts set forth herein. It

might change if the facts are determined to be incorrect. If the facts are determined to be incorrect, this opinion should not be relied upon. You should be aware that, under routing procedures which have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office, which should be in approximately 10 days. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.

In the years [REDACTED], [REDACTED], [REDACTED] and [REDACTED], a foreign corporation, owned a majority interest in [REDACTED] [REDACTED] ("[REDACTED]") a company incorporated in [REDACTED]. [REDACTED] filed timely [REDACTED], [REDACTED], [REDACTED] and [REDACTED] federal income tax returns using Forms 1120-F, U.S. Income Tax Return of a Foreign Corporation. [REDACTED] did not file as part of a consolidated return.

In [REDACTED], [REDACTED] purchased all outstanding ordinary shares of [REDACTED] for cash. In [REDACTED], [REDACTED] transferred its [REDACTED] operations to [REDACTED]. After the [REDACTED] operations were transferred to [REDACTED], [REDACTED] changed its name to [REDACTED]. After receiving [REDACTED]'s [REDACTED] operations [REDACTED] also changed its name to [REDACTED]. [REDACTED] never prepared a Certificate of Dissolution. [REDACTED] retained the EIN used by [REDACTED].

In [REDACTED], the [REDACTED] acquired a [REDACTED]% interest in [REDACTED]. In [REDACTED], at the conclusion of a friendly takeover, the [REDACTED] took majority control of [REDACTED].

In June, 1998, our office provided guidance to the Manhattan District as to the proper caption on Forms 872, Consent to Extend the Statute of Limitations for the [REDACTED] through [REDACTED] tax years to reflect the name change from [REDACTED] to [REDACTED]. A Form 872 was obtained with the following caption: "[REDACTED], EIN [REDACTED], as successor in interest to [REDACTED], EIN [REDACTED]." ("prior Form 872 Consent")

, (b)(7)a

[REDACTED]

In [REDACTED], the [REDACTED] announced the merger of [REDACTED] and [REDACTED] to form a new entity, [REDACTED]. Per the [REDACTED] Financial Report for [REDACTED], it was anticipated that in [REDACTED], [REDACTED] would absorb the operations of [REDACTED]. We are unaware if this merger occurred.

Attempts were made to obtain an English translation of the merger documentation for the anticipated merger between [REDACTED] and [REDACTED]. The merger documents have not yet been received.

This office contacted Ms. Robin Tuczak, an attorney with Procedure and Administration in the National Office, to discuss this case and to discuss what alternatives were available if the merger documentation could not be obtained. Ms. Tuczak suggested that multiple Form 872s be secured. Ms. Tuczak also suggested that the taxpayer provide a letter with their account of the transaction.

In accordance with Ms. Tuczak's suggestion, [REDACTED], Vice President and Tax Manager of [REDACTED], provided a letter detailing the transaction between [REDACTED] and [REDACTED] to be as follows:

"On [REDACTED], the taxpayer ([REDACTED] formerly [REDACTED]) merged with and was liquidated into its parent company, [REDACTED], and ceased to exist as a separate legal entity. Prior to [REDACTED], [REDACTED] was not engaged in the conduct of business in the United States. However, upon merger, it began to conduct a U.S. [REDACTED] business, with its succession to the U.S. assets and liabilities of the taxpayer ([REDACTED])."

Although titled Vice-President, we have no information as to whether [REDACTED] is authorized to act on behalf of the taxpayer. [REDACTED] indicated that an English translation of the plan of merger is currently unavailable and as soon as it becomes available he will forward a copy to the International Examiner, Joan Pagan. If the merger documentation is obtained prior to the expiration of the statute of limitations please forward the information to this office for review to determine whether the Forms 872 need to be changed.

Based on the above information there are two possible scenarios to consider:

1. [REDACTED] acquired [REDACTED] (through a purchase of stock) and merely changed its name to [REDACTED] without dissolving the old company; or
2. [REDACTED] acquired the stock of [REDACTED] and merged [REDACTED] into [REDACTED] calling the new company [REDACTED].

Until the merger documents are obtained, to protect the Service's interest, multiple Forms 872 should be obtained.

Discussion

As a preliminary matter, we recommend that you pay strict attention to the rules set forth in the Internal Revenue Manual ("IRM"). Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the extension, and IRM 4541.1(8) requires use of Letter 929(DO) to return the signed extension to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed extension is received from the taxpayer, the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event an extension becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, Section 3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Publication 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form 872. Alternatively, you may advise the taxpayer orally or in some other written form of the I.R.C. § 6501(c)(4)(B) requirement.

Regardless of which method you use to notify the taxpayer, you should document your actions in this regard in the case file. Although section 6501(c)(4)(B) does not provide a sanction or penalty on the Service for failure to comply with the notification requirement, a court might conclude that an extension of the statute of limitations is invalid if the Service did not properly notify the taxpayer. Thus, it is important to

document your actions in this regard in the case file.

Issue 1.

In general, the statute of limitations on assessment expires three years from the date the tax return for such tax is filed. I.R.C. § 6501(a). Section 6501(c)(4), however, provides an exception to the general three year statute of limitations on assessment. In accordance with this exception, the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations on assessment. For income taxes, the form used by the Service to extend the limitations period on assessment is Form 872 (Consent to Extend the Time to Assess Tax).

██████ did not file its returns as part of a consolidated group and, therefore, the consolidated return regulations (Treas. Regs. § 1.1502-1 et seq) do not resolve the issue at hand. See I.R.C. § 1502 (requiring the Internal Revenue Service to prescribe regulations concerning the tax liability of any affiliated group of corporations making a consolidated return).

While it appears that ██████ recently merger with ██████, merger documentation could not be obtained. Therefore, in order to protect the Service's interest we suggest that multiple copies of the Form 872 for the ██████ through ██████ tax years should be secured. The first should be captioned as follows:

"██████ (E.I.N. ██████), as successor in interest to ██████ (E.I.N. ██████), formerly known as ██████, EIN ██████."

The second Form 872 for the ██████ through ██████ tax years should be captioned as follows:

"██████ (E.I.N. ██████), formerly known as ██████ (E.I.N. ██████), formerly known as ██████ (EIN ██████)."

We recommend that you verify the EIN of ██████ subsequent to the merger, if any, if you have not done so previously. If any EIN change has occurred, such EIN should replace the EIN for ██████ identified in our above-recommended language for the Form 872.

If the merger documentation is obtained prior to the

expiration of the statute of limitations please forward the information to this office for review to determine whether the Forms 872 need to be changed.

We note that a principal officer of [REDACTED] should sign the Forms 872. In this connection, neither I.R.C. § 6501 nor its regulations specify who may execute a consent form for a corporation. The IRS generally applies the rules for the execution of original returns to determine who may execute a consent to extend the period of limitations. The Forms 872 in this case should be executed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act on behalf of the corporation. See Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

Issue 2.

, (b)(7)a



Should you have any questions regarding this matter, please contact Jody Rubinstein of this office at (212) 264-1595, extension 235.

ROLAND BARRAL
Area Counsel (LMSB:FSH)

By: _____
MARIA T. STABILE
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